



\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

*Reserved on: 09.09.2024
Pronounced on: 10.09.2024*

+ **W.P.(C) 12165/2024 & CM APPL. 50617/2024**

KABIR PAHARIA

.....Petitioner

Through: Mr. Rahul Bajaj, Mr. Taha Bin
Tasneem and Mr. Amar Jain,
Advocates

versus

**NATIONAL MEDICAL COMMISSION
AND ORS.**

.....Respondents

Through: Mr. T. Singhdev, Mr. Abhijit
Chakravarty and Ms. Anum
Hussain, Advocates for NMC.
Mr. Jaswinder Singh,
Advocate for R-2, 3 and 4

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. **The petitioner Kabir** has approached this Court, who, despite facing physical challenges, has been a brilliant and determined student. Kabir, with a **locomotor disability**, has not let his physical limitations define him as is apparent from his academic record.

2. Kabir's success in achieving academic excellence, despite his challenges, demonstrates that people who may face some physical



disability can, and have proved, make significant contributions to the society when given sufficient opportunities.

3. Kabir had completed his Class X Secondary School Examination in 2022 with an impressive 91.5% marks and Class XII in 2024 with 90% marks.

4. He states in his petition that **since childhood, Kabir had nurtured dream of becoming a doctor, driven by his deep belief that the medical profession is a noble path to serve society.** Thus, to achieve his dream, Kabir had decided to appear for the National Eligibility-cum-Entrance Test (Undergraduate), 2024 ['*NEET (UG)-2024*'] examination as an SC-PwD category candidate, with high hopes of fulfilling his dream.

5. His disability percentage was recorded at 42% as per his Disability Certificate dated 09.12.2023, a benchmark disability as defined under Section 2(r) of the Rights of Persons with Disabilities Act, 2016 ['*RPwD Act*'].

6. The National Testing Agency had conducted the NEET (UG)-2024 on 05.05.2024, and the results were announced on 04.06.2024. Following an order from the Hon'ble Supreme Court in *W.P. (Civil) No. 335/2024*, a revised scorecard was issued on 26.07.2024. Kabir's hard work paid off, as he had secured 542 out of 720 marks, placing him at PwD Category Rank 176, well above the cut-off score for the SC/EWS-PwD category.

7. Having successfully cleared the cut-off, Kabir became eligible for the next stage in the admission process, which required the issuance of a Certificate of Disability for NEET Admissions (NEET



Disability Certificate) from a designated Disability Certification Centre. On 16.08.2024, Kabir had approached Vardhman Mahavir Medical College - Safdarjung Hospital ['*VMMC-SJ Hospital* '], a recognized Disability Certification Centre in New Delhi.

8. However, despite the VMMC-SJ Hospital quantifying Kabir's disability at 68% in its NEET Disability Certificate dated 19.08.2024 i.e. within the permissible disability range of 40 to 80%, the Hospital concluded that Kabir was not eligible to pursue medical courses, thereby creating a barrier to his aspirations.

9. Kabir was compelled to approach this Court through this petition, seeking justice and the opportunity to pursue the career he has worked so hard for. He seeks grant of following prayers:

“A. Direction to the Respondent Nos. 1, 2 and 3 to declare the Petitioner eligible to pursue medical course;

B. In the meantime, the respondent no. 1/DoE is directed to ensure that in case any representation has been filed by the respondent no.2 School regarding the dispute pertaining to the entry level of the school, the same may be decided within three weeks from today..

C. In the alternative to Prayer A, direction to the Respondent No. 2 to reevaluate the Petitioner and assess his suitability to pursue MBBS course;

D. Grant the Petitioner compensation to the tune of INR 10,00,000/- for the harm and harassment suffered by him due to the callous and cavalier attitude of the Respondents.”

10. On behalf of Kabir, it has been contended that the Medical Board at VMMC-SJ Hospital, which has disqualified him from pursuing medical studies, had taken the decision without a thorough in-person examination or a reasoned evaluation of his abilities.



Instead, the Board had simply based its conclusion on the fact that both his upper and lower limbs were affected, ignoring his functional abilities and his success in the NEET exam, where he required no special assistance. It is also the case of Kabir that his disqualification strikes at the heart of his right to equality, as enshrined under Article 14 of the Constitution of India, as well as his right to pursue a profession of his choice under Article 19(1)(g). It is also asserted that the aforesaid decision violates several provisions of the RPwD Act, particularly Section 3, which calls for reasonable accommodation and non-discrimination.

11. In addition, it has been argued that the medical certificate, which disqualified Kabir from pursuing MBBS course, lacks any reasoning about how his disability would impact his ability to pursue medicine. In fact, the report only notes the existence of the disability without addressing how it might affect his functional capacity to study and practice medicine. The petitioner further contends that the modern shift in medical education to a Competency-Based Medical Education (CBME) framework focuses on the necessary competencies rather than any physical disability. Under CBME, the emphasis is placed on what a student can achieve through appropriate accommodations, which the petitioner asserts he is fully capable of doing. Given that Kabir falls within the permissible range of locomotor disability as per the National Medical Commission's guidelines, his disqualification is not only arbitrary but also unlawful. Thus, aggrieved by this decision, Kabir sought the intervention of



this Court to remove the barriers standing between him and his dream of becoming a doctor.

12. On behalf of respondent no.1 i.e. National Medical Commission, it has been argued that ‘Graduate Medical Education Regulations, (Amendment), 2019’ and ‘Appendix H-1’ thereto provides for guidelines regarding admission of students with ‘Specified Disabilities’ under the Rights of Persons with Disabilities Act, 2016. It has been contended that the petitioner is suffering from Locomotor Disability and there is disability of Bilateral Upper Limb and thus, he would not be eligible to pursue MBBS course.

13. On behalf of respondent no. 2 i.e. VMMC-SJ Hospital, it has been contended that the disability certificate and the concluding opinion mentioned therein is as per the rules and regulations set forth by the National Medical Commission, and thus, no fault can be found with the actions of VMMC-SJ Hospital.

14. **On the last date of hearing**, this Court, upon considering the petitioner’s prayers, had directed the formation of a Medical Board at All India Institute of Medical Sciences, New Delhi [‘*AIIMS, New Delhi*’] to independently assess the nature and extent of Kabir’s functional disability, as well as to determine whether his condition meets the requirements, necessary for being eligible to pursue MBBS course. In this regard, the order dated 03.09.2024 is extracted hereunder for reference:

“7. This Court’s attention has been drawn towards order dated 25.11.2022 passed in W.P.(C) 16306/2022 and order dated 16.08.2023 passed in W.P. (C) No.10781/2023



wherein the Co-ordinate Benches of this Court considered similar controversies and issued directions.

8. Having considered the submissions made by learned counsel appearing on behalf of the parties and in view of the similarity of the facts of the present case with the aforesaid orders passed by Coordinate Benches, this Court as an interim measures finds it appropriate to issue following directions:-

(i) The Director of All India Institute of Medical Science (AIIMS), New Delhi is directed to constitute a board of three experts in the relevant field to assess petitioner's disability and give an opinion on whether the petitioner could be able to pursue the said course and work as a doctor.

(ii) The report of the AIIMS be furnished to this court in a sealed cover by 06.09.2024.

(iii) The Board is at liberty to consider the applicable regulations.

(iv) The petitioner shall appear for medical examination before the Director of AIIMS, New Delhi at 2:30 PM on 05.09.2024.

9. List for final disposal on 09.09.2024.”

15. **The Medical Board**, after conducting a thorough evaluation of the petitioner's condition, has submitted its report to the Court. The report, however, concludes that Kabir's disability makes him ineligible to pursue MBBS course. This report reads as under:

“The meeting of the Medical Board was held on 06.09.2024 (Friday) at 12:00 Noon in Consultation Room No.13, MS Office Wing, ground floor, AIIMS, New Delhi. The available reports, earlier disability certificates and medical documents were reviewed. The petitioner Sh. Kabir Paharia was present and was examined by the members of Medical Board.

It is pertinent to note that the MBBS training program is unique as it is training future medical doctors likely to be involved in saving lives. This course of very long duration



(5 and a half years, including 1 year of Compulsory Rotating internship), with training in many subjects - preclinical, paraclinical and clinical (medical-surgical), and training in a variety of settings (OPD, Ward, Laboratories, Emergency, Operation Theatre, Community) as well as dealing with patients (children, men, women and in any age group). In pursuing MBBS course successfully, acquiring knowledge must be coupled with acquisition of appropriate skills including interventions including closure and suturing a wound, stopping bleeding, giving injections, bandaging, basic life support and resuscitation techniques, conducting a normal delivery, assisting in various procedures etc. as expected from an MBBS graduate. All the students have to learn various subjects and acquire the minimum prescribed skills. It should be noted that any limitation of the candidate shouldn't be to the detriment of patient safety or delivering the best patient care as expected.

Sh. Kabir Paharia has shared two Disability Certificates (one dated 09.12.2023 issued from Sanjay Gandhi Memorial Hospital, North West Delhi, Delhi and another dated 19.08.2024 issued from the Vardhman Mahavir Medical College & Safdarjung Hospital, New Delhi). There is a difference in the percentage of disability noted as certified.

This Medical Board after detailed assessment of the candidate states that the said candidate Sh Kabir Paharia belongs to the category of persons with benchmark disability (forty percent or more disability) due to congenital absence of multiple fingers in both hands as well as involvement of left foot (second and third toe). This disability is of the locomotor system and permanent in nature.

The Medical Board is of the opinion that the petitioner Sh. Kabir Paharia is NOT ELIGIBLE to pursue the MBBS graduation course. This Medical Board is of the opinion that this candidate will face certain difficulties in the course of time pursuing MBBS, because of the significant involvement of both hands with missing multiple fingers leading to limitations in acquiring and executing certain essential skills.”



16. The functional assessment of the disability which was essential to decide the present case has been categorically assessed by the Medical Board, and a detailed report has been prepared by the Board which consists of the experts of the medical field. The Court has to rely on their finding, since their findings are categorical that the petitioner herein *“will face certain difficulties in the course of time pursuing MBBS because of the significant involvement of both hands with missing multiple fingers leading to limitations in acquiring and executing certain essential skills”* since MBBS course involves *“training in many subjects - preclinical, paraclinical and clinical (medical-surgical)”* and requires acquisition of certain skills including *“closure and suturing a wound, stopping bleeding, giving injections, bandaging, basic life support and resuscitation techniques, conducting a normal delivery, assisting in various procedures etc. as expected from an MBBS graduate”*.

17. Thus, there is a **categorical finding** and the opinion of the experts in the medical field, who are authorized to make the assessment of **functional disability** of the petitioner and to further decide as to whether a candidate is fit to pursue an MBBS course, or not, and this Court cannot substitute its own opinion or assessment, being not an expert in the medical field. **This Court** will have to be guided by this opinion and in view of the said opinion, this Court would be unable to grant any relief to Kabir since the Medical Board at AIIMS has opined that Kabir would not be Eligible to pursue the MBBS course.



18. Learned counsel for the petitioner even after receipt of this report insisted that this Court could intervene and itself decide as to whether the functional disability of the petitioner would actually be a hindrance in pursuing the medical profession. **In this Court's opinion**, the evaluation of the petitioner's ability to pursue the course, and later practice as a doctor, had to be entrusted to the experts in the medical field. In this case, a thorough assessment has already been conducted by a panel of four experts from AIIMS. Given that the experts have given their opinion, this Court cannot review or overturn the findings of the Medical Board.

19. While Article 226 of the Constitution grants this Court wide discretionary powers, this Court is conscious of the fact that such powers are not so expansive as to allow the Court to create or modify eligibility criteria for pursuing medical education. These standards, including those related to physical and mental fitness, are determined by experts and institutions with specialized knowledge in the field of medical education. As much as this Court may wish to intervene on behalf of a deserving candidate like Kabir, it cannot overstep its jurisdiction by altering the established norms and benchmarks.

20. **This Court, though bound by the law as it stands today, does not want Kabir to feel disheartened by the outcome of this petition.** His journey and achievements have already proven that he possesses immense potential, and there may be some other avenues or disciplines of medical education where he can utilize his talent and shine with his dedication.



21. In this regard, this Court's attention was also drawn towards an order dated 18.04.2022 passed by the Division Bench of this Court in case of *Neha Pudil v. Union of India & Ors.* W.P.(C) 2815/2022, where under similar circumstances and while declining to grant relief to a similarly placed petitioner, the Division Bench had directed as under:

“...It is unfortunate that the petitioner, who appears to be otherwise meritorious, cannot pursue a MBBS Course on account of her physical handicap.

At the same time, we direct the respondent to explore the possibility of candidates, such as the petitioner, being able to pursue some of the disciplines, if not all, of medical education, considering the advancement of science and technology. Let this aspect be considered by the respondent no.5, in consultation with the Central Government, in the next six months.”

(Emphasis supplied)

22. This Court was informed by learned counsel for NMC that a fresh policy with regard to the aforesaid directions of the Division Bench has already been framed, however, the same would be applicable from the next academic year.

23. In case, Kabir's functional disability will not be a hindrance under the new policy mentioned above, he will have an opportunity in the next academic session.

24. **To conclude**, this Court observes that Kabir's journey in the present case represents the **hopes and dreams** of countless individuals who strive to overcome the odds stacked against them due to their disabilities. His determination to succeed despite physical limitations speaks volumes about the human spirit and resilience. For



a young boy to have never allowed his disability to stop him from scoring high in a competitive exam like NEET is a remarkable achievement. However, as commendable as Kabir's journey is, this Court is bound to respect the medical assessments made by experts and the existing statutory framework and guidelines. The Courts have to apply the law as it is and adjudicate the cases accordingly. Bound by the same, this Court is unable to grant any relief at this stage to the petitioner.

25. In view of the above, the present petition along with pending application stands dismissed.

26. **However, this Court, despite dismissal of this petition, tries to grant some succour to Kabir by referring to Great Sant Kabir, his namesake:**

*जिन खोजा तिन पाइया, गहरे पानी पैठ,
मैं बपुरा बूडन डरा, रहा किनारे बैठ*

[Those who search, find, by diving deep into the waters, I, the fool, was scared to drown and remained sitting on the shore]

27. The meaning of the proverb is that those who work hard, they get something or the other. This means that a hard-working diver goes into deep water and brings something back, whereas one who is scared to drown and does not make efforts to achieve their aims or hard work are unable to find much in their life. Kabir, the petitioner belongs to the first category and even if his functional disability has held him back this academic year, his academic record reflecting his



hard work will find him some other stream which may fulfill his dreams of achievement and serving the society.

28. The judgment be uploaded on the website forthwith.

SEPTEMBER 10, 2024/at **SWARANA KANTA SHARMA, J**